IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b))
Description of case

Writ Petition No.760(M/B) of 2003
And
28 other connected petitions.

Date of decision- 16.09.2003

For the approval of:-

Hon'ble Chief Justice S.H. Kapadia.

Hon'ble Mr. Justice Rajesh Tandon, J.

-Whether the order/judgment should be sent to the reports for reporting? (Yes)

-Whether the reports be allowed to see the judgment ? (Yes)

(Melkani)
P.S.

C.J's Court

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

W.P. No. 760 (M/B) 2003

Ekta Welfare Society …….. Petitioner

Vs.

Govt. of India, & Ors. …….. Respondents

And

W.P. No. 753 (M/B) 2003

Dr. Shalini Aul …… Petitioner

Vs.

Mussoorie Dehradun Development Authority,
& Ors. …….. Respondents

And

W.P. No. 754 (M/B) 2003

Sanjay Soni ……. Petitioner

Vs.

Mussoorie Dehradun Development Authority,
& Ors. …….. Respondents

And

W.P. No. 755 (M/B) 2003

Chand Kumar Setia …….. Petitioner

Vs.

Mussoorie Dehradun Development Authority,
& Ors. …….. Respondents

And

W.P. No. 756 (M/B) 2003

Sachin Setia ……. Petitioner

Vs.

Mussoorie Dehradun Development Authority,
& Ors. …….. Respondents

And

W.P. No. 757(M/B) 2003

Bobby Soin …….. Petitioner

Vs.

Mussoorie Dehradun Development Authority,
& Ors. …….. Respondents

And

W.P. No. 758 (M/B) 2003

Sanjay Soin …….. Petitioner

Vs.

Mussoorie Dehradun Development Authority,
& Ors. …….. Respondents

And

W.P. No. 759 (M/B) 2003

K.K. Soin ……. Petitioner

Vs.

Mussoorie Dehradun Development Authority,
& Ors. …….. Respondents

W.P. No. 866 (M/B) 2003

Vivek Kumar Puri ……. Petitioner

Vs.

Secretary & Ors. …….. Respondents

And

W.P. No. 768 (M/B) 2003

Ranjit Singh Negi ……. Petitioner

Vs.

State & Ors. …….. Respondents

And

W.P. No. 796 (M/B) 2003

Sultan Singh Rawat ……. Petitioner

Vs.

Secretary Ministry of Environment,
And Ors. …….. Respondents

And

W.P. No. 797 (M/B) 2003

Uday Singh ……. Petitioner

Vs.

Secretary Ministry of Environment,
And Ors. …….. Respondents

And

W.P. No. 798 (M/B) 2003

Alam Singh Payal ……. Petitioner

Vs.

Secretary Ministry of Environment,
And Ors. …….. Respondents

And

W.P. No. 799 (M/B) 2003

Vijay Ram Dhyani ……. Petitioner

Vs.

Secretary Ministry of Environment,
And Ors. …….. Respondents

And

W.P. No. 800 (M/B) 2003

Gajendra Payal ……. Petitioner

Vs.

Secretary Ministry of Environment,
And Ors. …….. Respondents

And

W.P. No. 801 (M/B) 2003

Sultan Singh Rawat ……. Petitioner

Vs.

Secretary Ministry of Environment,
And Ors. …….. Respondents

And

W.P. No. 802 (M/B) 2003

Kalu Ram ……. Petitioner

Vs.

Secretary Ministry of Environment,
And Ors. …….. Respondents

And

W.P. No. 803 (M/B) 2003

Sunder Singh ……. Petitioner

Vs.

Secretary Ministry of Environment,
And Ors. …….. Respondents

And

W.P. No. 804 (M/B) 2003

Mahipal Singh Payal ……. Petitioner

Vs.

Secretary Ministry of Environment,
And Ors. …….. Respondents

And

W.P. No. 805 (M/B) 2003

Durga Prasad Juyal ……. Petitioner

Vs.

Secretary Ministry of Environment,
And Ors. …….. Respondents

And

W.P. No. 810 (M/B) 2003

Rahul Dhand & Ors. ……. Petitioner

Vs.

Secretary Ministry of Environment,
And Ors. …….. Respondents

And

W.P. No. 811 (M/B) 2003

Virendra Prasad ……. Petitioner

Vs.

Secretary Ministry of Environment,
And Ors. …….. Respondents

Mr. Ranjit Saxena, learned Advocate for the petitioners.
Mr. G.S.Bisht, Senior Standing Counsel for Government of India.
Mr. S. Dhulia, Advocate for Mussoorie Dehradun Development Authority.
Mr. N.B. Tewari, learned Chief Standing Counsel for the State of Uttarakhand.

And

W.P. No. 793 (M/B) 2003

Ghanshyam ……. Petitioner

Vs.

Mussoorie Dehradun Development Authority,
& Ors. …….. Respondents

And

W.P. No. 794 (M/B) 2003

Hai Prakash & Ors. ……. Petitioners

Vs.

Mussoorie Dehradun Development Authority,
& Ors. …….. Respondents

And

W.P. No. 795 (M/B) 2003

Naveen Kumar ……. Petitioner

Vs.

Mussoorie Dehradun Development Authority,
& Ors. …….. Respondents

And

W.P. No. 806 (M/B) 2003

Rajesh Kumar Jain ……. Petitioner

Vs.

Mussoorie Dehradun Development Authority,
& Ors. …….. Respondents

And

W.P. No. 807 (M/B) 2003

Savitri Devi ……. Petitioner

Vs.

Mussoorie Dehradun Development Authority,
& Ors. …….. Respondents

And

W.P. No. 808 (M/B) 2003

Cambrain Hall education Trust,
And Ors. ……. Petitioners

Vs.

State & Ors. …….. Respondents

And

W.P. No. 809 (M/B) 2003

Indravati & Ors. ……. Petitioners

Vs.

Mussoorie Dehradun Development Authority,
& Ors. …….. Respondents

Mr. L.P. Naithani, learned Senior Counsel i/b Mr. Sharad Sharma, Ad. for the petitioners.
Mr. S. Dhulia Advocate for Mussoorie Dehradun Development Authority.
Mr. N.B. Tewari, learned C.S.C. for the State of Uttaranchal.

Coram: **Hon'ble S.H. Kapadia, C.J.,**
Hon'ble Rajesh Tandon, J.

Date: 16th September, 2003:

ORAL JUDGMENT: [Per Hon. Chief Justice]

1. This group of writ petitions raise common question of law and fact, therefore, they are taken up together. For the sake of convenience we are reproducing herein below the facts in writ petition No. 760 (M/B) 2003.

2. Ekta Welfare Society is a Society registered under Societies Registration Act 1860. It is the petitioner in writ petition No. 760 of 2003. The petitioner is the owner of the lands in the vicinity of Dehradun city. These lands are in village Majra in Tehsil and district Dehradun. The description of the lands is given in para-3 of the writ petition. The lands were purchased by the Society for constructing a residential colony. By this petition, the Society seeks to challenge notification dated 27th March 2003 issued under Section 4(1) of the Land Acquisition Act 1894 by which it has been notified that the lands are being acquired for construction of residential colony/ commercial and Govt. offices under Planned Development Scheme framed by Mussoorie Dehradun Development Authority. The area of the land proposed to be acquired is 450 acres vide notification under Section 4 dated 27th March 2003. By the said notification, inquiry under Section 5(A) of the Land Acquisition Act 1894 has been dispensed with by reasons of invocation of Section 17 (4) of the Land Acquisition Act. This was followed by notification under Section 6 of the Land Acquisition Act. That notification is dated 1st July 2003. It is the case of the petitioners that village Majra is well known for production of Basmati rice. In the petition, it is alleged that all the members of the petitioner's Society belong to backward classes. It is the case of the petitioners in the petition that under the Government Order dated 24th September 1985, issued by the State of U.P., the lands belonging to Scheduled Caste and

Scheduled Tribe cannot be acquired. It is the case of the petitioners in the petition that the State of Uttaranchal has also violated the Govt. Order dated 12th February 1990, issued by the State of U.P. under which the acquiring body was required to deposit the funds with the State before proceeding with the acquisition, which has not been done. It is further alleged in the writ petition that the U.P. Government had issued a G.O. on 27th March 1990 under which agricultural lands cannot be acquired without permission of U.P. Govt. Bhoomi Upyog Parishad. It is further alleged that on 26th March 1991, the U.P. Govt. has issued a D.O. letter on behalf of Bhoomi Upyog Parishad stating that the District Magistrate shall forward the acquisition proposal to Bhoomi Upyog Parishad. It is alleged that this G.O. is not complied with. It is further alleged that the Master Plan for Dehradun was prepared for the period 1982 to 2001. It is alleged that no steps have been taken under the Master Plan and that the Master Plan has since expired in 2001 and, therefore, the Planned Development is only a bogey. It is alleged that the lands cannot be acquired for Planned Development without Master Plan. It is alleged in the petition that the lands in question fall within the Green Belt and, therefore, it cannot be acquired for residential colony/ commercial complex and Government officer. It is further alleged that the Master Plan has no clearance from Govt. of India Ministry of Environment and Forests and, therefore, the acquisition is in violation of the laws governing environment because with the construction of residential colony/commercial and Govt. officers, the environment will be polluted. It is further alleged that till today no steps have been taken in pursuance of the Master Plan which expired in 2001 and the urgency Clause under Section 17(1) (4) of the Land Acquisition Act curtailing the right of the citizen to file objection under Section 5(A) of the Land Acquisition Act has been wrongly applied. It is alleged that there is no public purpose as the lands are being acquire by Mussoorie Dehradun Development Authority for making profits. It is alleged that the acquired land will be ultimately sold by Mussoorie Dehradun

Development Authority, therefore, there is no public purpose and the entire aim and object of the acquisition is to make profits. Further it is alleged that the acquisition is contrary to the various provisions of Land Acquisition Manual. It is alleged that under para-4 of the Land Acquisition Manual, urgency Clause can be invoked only when a railway line or a canal is required to be constructed. However, there is no urgency in the matter of construction of residential colony/commercial complex and Govt. offices under Planned Development Scheme and, therefore, invocation of Section 17(1) and Section 17(4) of the Act was unwarranted and that there is no justification for dispensing with inquiry under Section 5(A) of the Land Acquisition Act. It is alleged that the petitioners have lost their opportunity to file objection under Section 5(A) of the Land Acquisition Act and they have lost an important right of hearing without any justified reason. It is alleged that Mussoorie Dehradun Development Authority is a business organization and it is carrying on the business of selling plots and, therefore, there is no public purpose. It is alleged that the Master Plan abovementioned, has not been approved by Union Ministry of Environment and, therefore, the entire acquisition is bad in law. It is alleged that the acquisition is contrary to para-4 and para-39 of the Land Acquisition Manual. These are the grounds on which the above writ petitions are filed by Ekta Welfare Society.

3. In reply, Mussoorie Dehradun Development Authority (MDDA) has submitted that it is a Development Authority constituted under Section 4 of U.P. Urban Planning and Development Act 1973. That, after the creation of State of Uttaranchal on 9th November 2000, number of offices of Central and State Government Departments are urgently required to be set-up in Dehradun, which is the present capital of the State of Uttaranchal. That, large portion of lands have been acquire for developing GREATER DOON. That, large number of Govt. and non-Govt. offices were presently functioning in congested area in make shift accommodations. That, space was also required for commercial

purposes in the city area of GREATER Doon which will also have Interstate Bus Terminal and Transport City. It is further submitted, for the Planned Development Scheme Rs. 200 crores have been sanctioned by HUDCO as a loan out of which Rs. 20 crores have been disbursed and spent for payment of compensation. It is further submitted that the Planned Development Scheme is a time bound project. That, in case the constructions are not completed within the time bound schedule, Mussoorie Dehradun Development Authority will have to pay interest. That, even today, in the absence of proper accommodation for various Govt. Departments, the Government is required to hire private accommodation by paying huge rent, which is a non-plan expenditure. In the counter affidavit, Mussoorie Dehradun Development Authority has given the names of the Government Departments, which are required to be urgently accommodated. That, property dealers have resorted to selling off lands of small pieces without construction of proper roads. This has happened soon after the Lay-Out Plan has come to be approved. That for the aforestated reasons it was necessary to invoke Section 17(1) and Section 17(4) of the Land Acquisition Act. It is further submitted that in the Planned Development Scheme there are facilities provided like- residences, hospitals, parkings, roads, sewers, play-grounds etc. It is submitted that the Govt. Orders, issued by the U.P. Govt. and the Land Acquisition Manual are in the nature of administrative instructions only. It is further alleged by the Development Authority that Ekta Welfare Society has divided the plots, purchased by it, into small plots and they have transferred these small plots to large number of persons without preparing Lay-Out Plan and in violation of the Bye-laws of Mussoorie Dehradun Development Authority. It is further pointed out that prior to present acquisition, notification was issued for acquiring some of the lands in village Majra for Interstate Bus Terminus where the work is in progress. It is further submitted that the Master-Plan is subsisting even after 2001 vide order issued on 14th May 2001 extending the period of the Master-Plan under Section 13 of Urban Planning

Development Act. It is submitted that the Plan has been approved by Special Land Acquisition Officer on behalf of the Collector. It is further submitted that even if lands are agricultural lands, the impugned acquisition will not be invalidated. It is submitted even if the lands are shown in Green Belt, they can still be acquired for Planned Development Scheme for all the aforestated reasons. It is, therefore, submitted by the Development Authority that the impugned acquisition is for a public purpose and lands are required to be acquired on urgent basis for Planned Development Scheme and, therefore, the Government is right in invoking Section 17(1) and 17(4) of the Land Acquisition Act.

4. The Government has also filed a counter affidavit. It has pointed out that the lands in dispute are situated in village Majra and Kargi-Grant Tehsil central Dehradun and some portion of lands under acquisition are also situated in villages Tarala Nagal, Dhoran khas, Parwadoon (Dehradun) which are either under cultivation or they are lying vacant for want of irrigation facilities. It is further submitted by the Government that the lands are acquired for public purpose. It is argued that Section 17(4) as applicable to the State of Uttaranchal can be invoked in respect of lands required under Planned Development Scheme.

ARGUMENTS

5. Mr. Saxena, learned counsel appearing on behalf of the petitioners submitted that the lands in question are acquired for construction of residential colonies and for commercial complexes. He contended that there is no public purpose in the matter of construction of residential colonies and commercial complexes. He contended that Mussoorie Dehradun Development Authority purports to construct residential house, shops and colonies in order to earn profits. He contended that the Master Plan expired in 2001 and no steps have been taken thereafter. He contended that correspondence has been going on with the Central Government and the Development Authority for last three years and, therefore, there

is no urgency for invoking Section 17(1) and Section 17(4) of the Land Acquisition Act. Mr. Saxena next contended that, in this case, the State Government has violated Govt. Orders issued by the U.P. Govt. as far back as 27th August 1988 and 8th February 1993 under which decision has been taken by State of U.P. that, acquisition proceedings should commence only after funds are deposited by the Development Authority with the Collector. He submitted that till today; the Development Authority has not deposited the funds with the Collector. He, therefore, contended that acquisition, in this case, cannot proceed without the Development Authority depositing the funds with the Collector. Mr. Saxena, learned counsel for the petitioners invited our attention to the Office Memo dated 18th February 2000 in which it is stipulated that proposals for land acquisition will be made only after it is approved by U.P. Housing Development Board and after it is approved by the Development Authority. He contended that, in the present case, the State has not obtained approval of U.P. Housing Development Board. He, therefore, contended that acquisition proceedings are bad in law. It was argued that, in any event, till today the Development Authority has not deposited the funds with the Collector and, therefore, there was no urgency in invoking Section 17(1) and Section 17(4) of the Land Acquisition Act. He contended further that there is no material to show that the Development Authority has raised the amount of Rs. 200 crores from HUDCO. He contended that HUDCO has only sanctioned the loan; that till today the loan has not been disbursed. He, therefore, contended that there is no loss suffered by the Development Authority and, therefore, there was no urgency to acquire the lands in question. Mr. Saxena, learned counsel for the petitioners next contended that para-4, para-9 and para-14 of Land Acquisition Manual, 1988 have been violated. He pointed out that under para-4 of Land Acquisition Manual, urgency Clause under Section 17(1)(4) of the Land Acquisition Act can be invoked only in the matter of construction of canals, railway lines or other projects. He contended that in view of para-4 of Land Acquisition Manual,

urgency Clause cannot be invoked for Planned Development Scheme. Similarly, it was argued that under para-9 of Land Acquisition Manual, the State Govt. cannot invoke Section 17 till the acquiring body deposits estimated amount of compensation in PLA account. He contended that till today, the Development Authority has not deposited the compensation in the PLA account of the State and, therefore, para-9 (2) of the Land Acquisition Manual is also violated. Similarly, it was argued that under para-14 of the Land Acquisition Manual, acquisition proceedings cannot commence till a proposal of acquisition of land is submitted to the Collector who has to make a preliminary inquiry and since, in the present case, no such preliminary inquiry is made, the acquisition is bad in law. In any event, there was no urgency to invoke Section 17(1)(4) of the Land Acquisition Act. Mr. Saxena, learned counsel for the petitioners contended that till today the State Govt. is not sure whether Dehradun should be the capital of the State; that, a Commission is appointed to look into that aspect; that, the capital may be changed at a later date. He, therefore, contended that there is no urgency to acquire the lands. He contended that the Development Authority is proceeding with the acquisition proceedings on the ground that Dehradun is the capital of the State. However, if at a later date, Dehradun is not found fit to be declared as State Capital, then the entire project formulated by the Development Authority will fail because in that event Govt. offices will have to be located at a different site. He further contended that there was no urgency to invoke Section 17 of the Land Acquisition Act because till today, the Commission has not given its report He submitted further that in the counter affidavit of the State Govt., there is nothing to indicate extension of the proposal for acquisition for Planned Development of Dehradun. He contended that large areas of agricultural lands are being acquired under the impugned project. He contended that agricultural lands cannot be acquired without the permission of Bhoomi Upyog Parishad. He relied upon the Circular issued by the State of U.P. dated 5th February 1993 in that regard. He cited

numerous judgments of various High Courts where the Courts have come to the conclusion that where there was no material for invoking Section 17 of the Land Acquisition Act and notification under Section 17(1) have been accordingly set-aside. Mr. Saxena, next contended that, in the present case, lands are being acquired in order to earn profits at a later date and, therefore, the acquisition is mala-fide

6. Mr. Naithani, learned senior Counsel, appearing on behalf of the petitioners in writ petition No. 793/2003 submitted two grounds for attacking acquisition in this case. He submitted that there is total non-application of mind in issuance of notification under Section 4(1) of the Land Acquisition Act. He submitted that there are alternative lands in existence in the vicinity of Dehradun and yet, for want of opportunity, it is not possible for the petitioners to object to the acquisition. He contended, if opportunity to raise objections is given to the petitioners, they are in a position to demonstrate that there are alternative lands capable of acquisition. He submitted that the petitioners in writ petition No. 793/2003 are farmers. He submitted that the petitioners are earning their livelihood from these agricultural lands, which are sought to be acquired. He argued that the lands in Village Majra, grow Basmati rice. He submitted that large quantity of water has seeped into the lands and, therefore, it is not possible for the Development Authority to construct buildings. In this connection Mr. Naithani submitted that in the past, the Development Authority constructed buildings on agricultural lands in the vicinity of Dehradun which had collapsed after construction, as water had seeped into the lands, which were acquired. He further pointed out a few instances to show that there was no urgency to acquire the lands in question. In this connection, he pointed out that, in the past, in March 1992 lands were acquired for Interstate Bus Terminus, however till today no steps have been taken to complete that acquisition. He contended that there was no public purpose in the present case. He contended that Planned Development Scheme was bogey. He contended, even acquisition for the Interstate Bus

Terminus, was to make profits because the Government wants to let out the Bus Terminus to a private party of Andhra Pradesh for a consideration of Rs. 80 lacs. He, therefore, contended that the impugned acquisition is not for a public purpose. Similarly, he gave some illustrations in respect of his contention. There was an acquisition for construction of Transport Nagar. For Transport Nagar, lands were acquired by Govt. of U.P. from the farmers in the year 1992 for Rs. 3,00/- per sq. metre, which lands were subsequently, sold to private parties by the Development Authority for Rs. 3,000/- per sq. metre. He, therefore, contended that there was no public purpose in the present acquisition and the entire exercise was sham and bogus. He further pointed out that even till today no steps have been taken to complete the acquisition initiated for construction of Bus Terminus. He contended that the entire exercise is to enrich private parties. Mr. Nainthani, learned Senior Counsel for the petitioners contended that none of these facts have been controverted by the State in their counter affidavit. He submitted that the Development Authority has not filed any counter affidavit to his petition in which it has made serious allegations of mala-fides. He invited our attention to the judgment of the Hon'ble Supreme Court in the case of *Om Prakash* Vs. *State of U.P.,* reported in 1998 (6) Supreme Court Cases, page-1, in support of his contention that the subjective satisfaction to waive enquiry under Section 5(A) should be based on relevant material.

ISSUE

7. The question which arises for determination is :- Whether the act of dispensing with inquiry under Section 5(A) of the Act in the present case was based on any real and genuine subjective satisfaction based on the relevant data available with the State Authorities at the time when they issued the impugned notification under Section 4(1) of the Land Acquisition Act dispensing with Section 5(A) inquiry, by resorting of Section 17(4) of the Said Act?

8. Our answer to the above question is in the affirmative.

REASONS

9. State of Uttaranchal came into existence on 9th November 2000. Prior thereto it was a part of State of U.P. State of Uttaranchal is a hilly area. There is scarcity of open space in the State. Dehradun is the Capital of the State. With Dehradun, becoming the State Capital, acute pressure on the lands took place on account of increase in population, business and commercial activities. On Dehradun becoming a State Capital, Government was required to set up Sachivalaya, Govt. offices, offices for the Local Bodies, offices for State Corporations and lastly residential colonies for Govt. Officers and staff. This ground reality is required to be noted. Secondly, the Government Orders and decisions taken by State of U.P., prior to 9th November 2000, continue to apply in this State, even after 9th November 2000 under the U.P. Reorganisation Act, 2000. This aspect is of some relevance because, in this case, it has been argued repeatedly on behalf of the petitioners that certain decisions pertaining to acquisition, which were taken in March 1992, have remained incomplete and unimplemented. In this connection, the example of Interstate Status Bus Terminus has been given. It is true that several decisions have been taken in the past in mattes of acquisition, service conditions of employees, development of Interstate routes etc. by the State of U.P. and those decisions have remained unimplemented but that is not the ground for saying that there is no urgency for the Successor State to take steps to develop the areas under the Planned Development Scheme. For example: it is alleged that to steps have been taken with regard to implementation of acquisition made for Transport Nagar and the Interstate Bus Terminus. This is denied by the Development Authority, However, even assuming that no steps have been taken, a alleged, they were not taken by U.P. Government and the Successor State cannot be held liable and the Successor State cannot be pre-empted from taking urgent steps under the Land Acquisition Act. In fact, the urgency has

come about because Dehradun has now become the capital and Planned Development of that city is urgently warranted. These are the basis ground facts. We have decided the present matter in the light of this reality. We are aware that citizens are deprived of agricultural lands and their livelihood. However, Court has to strike a balance in such matters between the larger welfare of the people of this State vis-à-vis individual proprietary interest.

10. As stated above, Mussoorie Dehradun Development Authority has filed an affidavit. A bare reading of the counter affidavit of the Development Authority in writ petition No. 760/2003 shows that lands around Dehradun are sought to be acquire; that the Planned Development Scheme known as GREATER DOON indicates expansion of the area around the Capital City; it is like a twin city being set up like New Mumbai, Gandhi Nagar etc. As stated above, there is paucity of open space because this State essentially is a hilly are. Under the Planned Development Scheme, we have Interstate Bus Terminus, Transport City and also reservation of areas for parks, gardens etc. This is besides earmarking open spaces for Govt. offices, schools and commercial complexes. The counter affidavit further shows urgent need to set up offices for 25 State Government Departments. The area under acquisition is 450 acres. Looking to the paucity of the open space, this area of 450 acres is relatively huge. If objections are required to be called for, it would take several years to undertake and implement the said Scheme. In the counter affidavit, filed by the Development, Authority there is a specific denial to the allegations made by the petitioner that no steps have been taken to implement acquisition in respect of Transport Nagar and Interstate Bus Terminus. Further, in the counter affidavit, it has been pointed out that the Development Authority has raised a loan of Rs. 200/- crores from UHDCO. This aspect is also important. Rs. 20 crores have been disbursed. The Development Authority has to pay interest on the sanctioned amount. Mounting interest on Rs. 200/- crores is a drain on the economy, if there is no corresponding development. It has been repeatedly argued on behalf

of the petitioners that the Interstate Bus Terminus is being set up for a private business and, therefore, there was no public purpose. We do not find any merit in this arguments. Interstate Bus Terminus is a very important aspect of economic development for this State. Roads from U.P. to Himanchal Pradesh pass through this State. This State earns revenue from vehicles, which ply through interstate routes. Therefore, setting up of Interstate Bus Terminus is a very important aspect for the economic growth of the State. In this country, with several States facing deficits, large numbers of Governmental functions are given to the private sector. This economic reality is required to be kept in mind in the changing scenario and, therefore, even assuming for the sake of argument that this Interstate Bus Terminus will be managed by the private sector, it would still form part of public purpose under the Land Acquisition Act. Hence, there is no merit in the argument of the petitioners that there is no public purpose in this case. For aforestated reasons, we are of the view that there is adequate material on record justifying dispensation of inquiry under Section 5(A) of the Land Acquisition Act. We do not find any merit in the argument of the petitioners that there is violation of the provisions of Land Acquisition Manual and the Government Orders issued by State of U.P. Firstly; the Planned Development Scheme is going to be inconsonance with the Master Plan Secondly, policy decisions of the State of U.P., as mentioned in the Govt. Orders issued in the years 1988 and 1992, cannot prevent the Successor State from acquiring the lands for Planned Development of its capital. There is nothing under the Land Acquisition Act, which prevents the State from taking its own policy decision in the matter of acquisition of lands for Planned Development Scheme. Lastly, there is no violation of any of the Clause of the Land Acquisition Manual. The Development Authority has raised a loan from HUDCO. This fact is not denied. Therefore, there is compliance of Land Acquisition Manual. The said Manual does not prevent the Govt./Acquiring Body from raising loans or from acquiring lands by way of Self-Financing Schemes.

Hence, there is no violation of the Land Acquisition Manual. Even the G.Os., issued by the State of U.P. are required to be read with the Master Plan and its Amendments. Nothing prevents this State from changing the user of the land from agriculture to construction of buildings the user of the land from agriculture to construction of buildings for Govt. offices, schools etc. In the circumstances, there is no merit in any of the arguments advanced on behalf of the petitioners.

11. Before concluding, we would like to refer to the judgment of the Supreme Court in the case of *Om Prakash Vs. State of U.P.*, reported in 1998 (6) Supreme Court Cases, page-1; on which great reliance is placed by Mr. Naithani, learned Senior Counsel for the writ petitioners in writ petition No. 793/2003. As stated above, it was argued on behalf of the petitioners that in this case the acquisition is bad for want of application of mind and colourable exercise of power by the State. It was argued on behalf of the petitioners that the subjective satisfaction of the State Authorities in invoking Section 17(4) of the Act was not based on relevant material and consequently, invoking of Section 17(4) and dispensing with Section 5(A) inquiry, followed by Section 6 notification was bad in law. For this purpose, reliance has been placed on the above judgment of the Supreme Court in the case of Om Prakash Vs. State of U.P. (Supra). In that matter, it has been held by the Supreme Court, on facts of that case, that there was no real and genuine satisfaction based on relevant material available to the State Authorities at the time when they issued impugned notification under Section 4(1) of the Act dispensing with Section 5(A) inquiry, by invoking Section 17(4) of the Land Acquisition Act. However, the ratio of that judgment is to the effect that the recitals in the impugned notification are not conclusive. That, in every matter, the Court must ascertain whether the decisions of the State Authorities in dispensing with Section 5(A) inquiry, are based on relevant material available with those Authorities. That, urgency cannot be assumed merely because the lands are required by the State Authorities under the Planned Development Scheme. That, each will depend on its own facts.

In that matter, the facts were completely different from the facts of the present case. In that manner, notification under Section 4 read with Section 17(4) was issued on 5th January 1991 followed by notification under Section 6 dated 7th January 1992. This was one of the reasons for the Supreme Court to come to the conclusion that there was no urgency to dispense with Section 5(A) inquiry. This is not the position in the present case. In the present case, the notification under Section 4 is dated 27th March 2003 whereas the notification under Section 6 is issued on 1st July 2003. Secondly, in that matter the decision to acquire the lands was not implemented by the State of U.P. for six years and, therefore, the Supreme Court took a view that there was no urgency to dispense with Section 5(A) inquiry. In the present case, as stated herein above, there is no delay on the part of the Successor State of Uttaranchal and delay, if any, in not implementing earlier acquisition decisions, was on State of U.P. Therefore, the judgment of the Supreme Court has no application to the facts of this case. Thirdly, in the case before the Supreme Court, approximately 450 acres of lands were sought to be acquired out of which 90% of the lands under acquisition were allowed to be acquired because there was no objection from the citizens. However, 10% of the lands came under 'Abadi'. Basically 'Abadis' refer to lands covered by residential houses and under the policy of the State of U.P., acquisition was not permissible in respect of the lands covered by 'Abadis'. Therefore, the Supreme Court directed the petitioners to move the State Government under Section 48 of the Land Acquisition Act. The Supreme Court, while deciding the matter has clearly laid down that dispensation of Section 5(A) inquiry, will depend on the facts of each case. In the circumstances, the judgment of the Supreme Court in the case of *Om Prakash* Vs. *State of U.P.* (Supra) has no application to this case. Therefore, we are not required to go into decisions of various High Courts, cited on behalf of the petitioners.

12. For aforestated reasons, all the above writ petitions are dismissed with no order as to costs. Interim orders of status quo are hereby vacated.

13. Learned Advocates for the petitioners apply for stay of operation of this order for eight weeks. Stay refused.

(Rajesh Tandon, J.) **(S.H. Kapadia, C.J.)**

Melkani: